

**REMARKS/ARGUMENTS**

Upon entry of the instant amendment, claims 25 and 37 will be amended, whereby claims 1-39 will remain pending. Claims 1 and 25 are independent claims.

By the present amendment, claims 25 and 37 have been amended to remove a double occurrence of “for”, and to render the claims more uniform.

Reconsideration and allowance of the application are respectfully requested.

**Discussion Of Interviews**

In order that the record is complete, Applicants note that a Completion of Record Regarding Telephone Calls with Patent and Trademark Office was filed on October 25, 2004.

**Rejections Based Upon Prior Art**

Claims 1-39 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Doherty et al. (hereinafter “Doherty”), U.S. Patent No. 5,607,716. The rejection contends that Doherty teaches the various components of Applicants’ food composition. The rejection then contends that the claims appear to differ as to the gelation temperature but considers this to be inherent or obvious in view of Doherty.

In response, Applicants note that the Examiner indicated during the telephone interview of October 6, 2004 referenced in the above-noted October 25, 2004 submission ,

that Figures 1-6 were unreadable and could not locate the clearer sheets of Figures 1-6 that were concurrently submitted with the Declaration Under 37 C.F.R. 1.132 of Dorthe Pedersen. Accordingly, a Supplemental Declaration Under 37 C.F.R. 1.132 of Dorthe Pedersen is being submitted herewith which includes clearer copies of the Figures.

Moreover, as also noted in the October 25, 2004 submission, the Examiner indicated that the results indicated in the Declaration should distinguish Applicants' invention over the prior art of record. However, the Examiner indicated that she would like to further consider the Declaration and the prior art.

With regard to the Declaration and the Supplemental Declaration, Applicants note that these documents show that the composition of Doherty as presented in Example 1 has a gelation temperature, determined as the intersection of the graphs of  $G'$  and  $G''$ , of greater than 95°C. Therefore, Doherty does not teach or suggest the subject matter recited in Applicants' claims including, amongst other features, a food composition and processes associated therewith having a gelation temperature, determined as the intersection of the graphs of elastic modulus,  $G'$ , and viscous modulus,  $G''$ , measured on a HAAKE<sup>TM</sup> Rheometer, RS 100 using the settings - Gradient 1°C/min, 0.4640 Hz, 95°C - 65°C,  $t=1800$  s, 0.50 Pa, 65°C - 35°C,  $t=1800$  s, 2.50 Pa, of said food composition is < 95°C.

As stated in paragraph 10 of the Supplemental Declaration, the composition of Doherty produced in paragraph 8 of the Supplemental Declaration was subjected to analysis of elastic modulus,  $G'$ , and viscous modulus,  $G''$ , and a copy of the graphs of  $G'$

and  $G''$  is attached as Appendix I, Fig. 7. The elastic modulus,  $G'$ , and viscous modulus,  $G''$  were measured on a HAAKE<sup>TM</sup> Rheometer, RS 100 using the settings - Gradient 1°C/min, 0.4640 Hz, 95°C - 65°C,  $t=1800$  s, 0.50 Pa, 65°C - 35°C,  $t=1800$  s, 2.50 Pa. The graphs of  $G'$  and  $G''$  show that the two graphs do not intersect at a temperature of  $<95^\circ\text{C}$ , which means that the gelation temperature, determined as the intersection of the graphs of  $G'$  and  $G''$  is  $>95^\circ\text{C}$ .

As stated in paragraph 11 of the Supplemental Declaration, in contrast to the composition of Doherty which has a gelation temperature, which is determined as the intersection of the graphs of  $G'$  and  $G''$ , and is  $>95^\circ\text{C}$ , the gelation temperature of the food composition of the presently claimed invention, determined as the intersection of the graphs of elastic modulus,  $G'$ , and viscous modulus,  $G''$ , measured on a HAAKE<sup>TM</sup> Rheometer, RS 100 using the settings - Gradient 1°C/min, 0.4640 Hz, 95°C - 65°C,  $t=1800$  s, 0.50 Pa, 65°C - 35°C,  $t=1800$  s, 2.50 Pa, is  $< 95^\circ\text{C}$ .

Therefore, the rejection of record should be withdrawn, because in the instant situation, the rejection has merely asserted that the gelation temperature is a consequence of the composition and thus a value below  $95^\circ\text{C}$  would be inherent and/or obvious to that of Doherty. However, the rejection does not provide any support for establishing that the gelation temperature is a necessary consequence of the composition of Doherty. Moreover, with respect to the obviousness rejection, it is once again noted that the rejection is silent with regard to any modification of Doherty to arrive at Applicants' disclosed and claimed invention. Accordingly, the rejection is without appropriate basis.

Therefore, the anticipation and obviousness rejections should be withdrawn.


### **CONCLUSION**

In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the objections of record, and allow all the pending claims.

Allowance of the application is requested, with an early mailing of the Notices of Allowance and Allowability.

If the Examiner has any questions or wish to further discuss this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,  
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December 23, 2004  
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